IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

C.W.P. No.1540 of 2007

Judgment reserved on: 9.10.2007

Date of decision: 22nd October, 2007.

Vivek Thakur ....Petitioner

-Versus-

State of H.P. and others ….Respondents

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.

The Hon'ble Mr.Justice V.K.Ahuja, Judge.

Whether approved for reporting? No

For the Petitioner: Mr.K.D.Batish with Mr.A.K.Dhiman, , Advocates.

For Respondents: Mr.M.S.Chandel, Advocate General with Mr.A.Burathoki, Addl.A.G. for respondents 1 to 3.
Mr.V.D.Khidtta, counsel for R-4.
Mr.Ajay Mohan Goel, counsel for R-5.

Deepak Gupta,J.

The petitioner by means of this writ petition has challenged the admission of respondent No.5 in the MBBS Course in Indira Gandhi Medical College, Shimla under the backward area category.

The Himachal Pradesh University issued a prospectus for HPCPMT session 2007-08 for pre-medical entrance test to the MBBS/BDS courses in Himachal Pradesh. Clause 3 of the prospectus provided that 3 seats in IGMC Shimla, two in Dr.Rajendra Prasad Government Medical College, Tanda and two seats in Himachal Pradesh Dental College, Shimla were reserved for

candidates belonging to the backward areas. Clause 3 provides the eligibility criteria for backward area seats. It lays down that the candidates should belong to the backward area and must be permanent resident of that backward area and must have passed at least 2 out of 5 examinations i.e. Primary/Middle/Matric/10+1/10+2 from the schools located in the backward area. It is further provided that if no candidates who has passed two examinations from a backward area is available then a candidates belonging to the backward area can also be considered.

Section 4 of the prospectus relates to eligibility. Clause (1) of Section 4 provides that the bonafide Himachalis to be eligible to apply should have passed at least two out of 4 examinations i.e. middle/matric/10+1/10+2 from recognized schools or colleges situate within the State of Himachal Pradesh.

Section 7 of the prospectus deals with the certificates and other documents to be filed along with the application. One of the documents to be filed is application in form No.2. In the case of backward area candidates there is also a condition of filing a certificate of having passed the primary school examination from a recognized institution showing the place where the said institution is located. Certificate of having passed middle, matric, 10+1, 10+2 examinations from recognized institutions and showing place where the institution is located are also required to be filed.

The case of the petitioner is that respondent No.5 Kirti Rana has not passed his middle examination from a recognized school and

hence he was not entitled to be granted admission under the backward area candidates. It is also averred that he has made a wrong declaration against column No.15 of Form No.2 wherein he has declared that he has passed primary and middle examination from a recognized school in backward area.

The respondent No.5 in his reply has not denied the fact that he appeared in the middle standard examination as a private candidate. According to him he was a student of the Sarswati Vidya Mandir High School, Chirgaon. When he appeared in the 5th class the school was recognized for conducting primary classes. However, when he appeared for the 8th standard examination the school had not been affiliated for this examination with the H.P. Board of School Education and therefore all the students studying in the said school at Chirgaon appeared as private candidates at Government Senior Secondary School, Chirgaon. It is further alleged that the respondent No.5 has not withheld any fact from the authorities and last year he has been selected to the BDS course under the backward area category. This year he could manage to get admission in the MBBS course and therefore has given up his seat in the BDS course. It is contended that the petition has been filed at a highly belated stage and therefore should not be entertained.

It would be pertinent to mention that after the examinations were held in June, 2007 counselling took place in July, 2007. On 17.7.2007 three persons including Sh.Chaman Thakur father of the present petitioner filed a complaint to the Secretary, CPMT

Counselling Committee, 2007 raising an objection in regard to the eligibility of respondent No.5 Kirti Rana. Despite this objection having been raised on 17.7.2007 no further action was taken by the petitioner and the writ petition was actually filed on 17.9.2007 more than 2 months after the counselling took place. There is no explanation given by the petitioner as to why he remained silent for more than 2 months. The petition first came up before this Court on 26.9.2007.

The Apex Court in **Mridul Dhar (Minor) and another vs. Union of India and others, (2005)2 SCC 65,** has laid down the time schedule for completing the admission process to the MBBS, BDS and Post Graduate courses. In respect of MBBS and BDS courses the schedule provides that no student can be admitted to any course against a vacancy arising due to any reason after 30th September, 2007. The petitioner slept over the matter and filed this petition at the fag end and now we are in the month of October, 2007. The petitioner is guilty of delay and laches since he has not pursued his case with the promptitude expected of him. He should not have waited till the end of September for filing the petition. We are, therefore, not going into the merits of the case. Even if we were to hold that the respondent No.5 was not eligible the seat would go vacant and the petitioner cannot be granted admission against the said seat. It may be true that the petitioner is doing his BDS course and for the first year BDS course and first year MBBS course is the same. However, the Apex Court has in no uncertain terms laid down

that the last date for admission for any reason whatsoever is 30th September, 2007. In case the petitioner had raised this plea at an earlier stage the respondent No.5 may not have withdrawn from the BDS course in which he has joined the second year. The respondent No.5 withdrew his candidature from the BDS second year and has lost one year and joined MBBS course. In case we throw him out from MBBS course grave injustice would be caused to him.

Even otherwise it is admitted that the respondent No.5 belongs to a backward area. It is also proved that he has passed his primary examination from a recognized school in a backward area. The only dispute is with regard to the passing of his middle standard examination. According to respondent No.5. he continued to study in the same school but since the school was not affiliated he had to appear for the examination as a private candidate. This contention of the respondent has not been denied.

Keeping in view the aforesaid discussion, we are of the view that the petition deserves to be rejected and it is accordingly so ordered. No costs.

(Deepak Gupta),
Judge

October 22, 2007.
PV

(V.K. Ahuja),
Judge